

Internal Revenue Service
Director, Exempt Organizations

Department of the Treasury
P.O. Box 2508
Cincinnati, Ohio 45201

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Employer Identification Number:

Person to Contact - ID#:

Contact Telephone Numbers:

Phone

Fax

UIL Code

4945.04-04

LEGEND

B= Organization

C= Grant Program

Dear

We have considered your request, dated November 4, 2009, for advance approval of your grant-making program under section 4945(g)(1) of the Internal Revenue Code.

Our records indicate that B was recognized as exempt from Federal income tax under section 501(c)(3) of the Code and that it is classified as a private foundation as defined in section 509(a).

B intends to commence C which will be dedicated solely to the improvement and enhancement of the artistic capacity, skill, and talent of individuals selected to participate. C will provide gifted artists from varied creative fields, including those in the fields of painting, photography and sculpture, new media, music, new genre art and interdisciplinary art, with the unique opportunity to concentrate on their work in a supportive and collegial environment. C will provide an opportunity for artists to meet with each other in a setting conducive to the exchange of ideas away from the pressures of daily life with the intent and purpose of improving and enhancing their artistic capacity, skills and talents. C also will allow artists to work without distraction in an effort to break new ground and focus on their individual goals. B expects that a residency of one, two or three months will enable the various artists participating in C to complete work in progress, to start on new works or to develop a new line of creative endeavor. In some instances, a residency of up to a whole year may be possible, if it is determined that such amount of time is required in order to fulfill the purpose of improving and enhancing the capacity, skills and talents of the participating artists, the intended purpose of C. There are no set number of C that will be conducted by B in any given year or number of artists that will participate. B intends to determine the number, nature and term of C, as well as the number of participating artists, on a periodic and ongoing basis.

C will not be project-based nor will it be directed by the issues of any moment in the world of art ideas. C will be solely dedicated to the development of the individual artist, so as to improve and enhance his or her artistic capacity, skill, and talent and to help establish the artist within the art world. The production of any artwork as a result of C is seen as a byproduct of creative introspection, not as an end in itself. While the artists participating in C will be provided with room and board, most will have to make personal sacrifices to participate. Each artist participating in C will be granted a free non-living studio space and a reasonable stipend for materials and living expenses.

C will be consistent with B's exempt status under IRC Section 501(c)(3) and the allowance of a charitable contribution under IRC Section 170(c)(2)(B), as it furthers its educational and charitable purposes, B's core missions, which include fostering and encouraging progress, improvement and creativity in the visual arts. B will oversee C and will take any and all necessary steps, including having staff members present, to ensure that each individual selected actively pursues the stated objectives. If B determines that any individual is no longer actively pursuing such objectives, such individual will not be allowed to continue to participate, and will be required to reimburse B for travel and any special expenses that may have been incurred on his or her behalf in connection with his or her participation. Similarly, if an individual withdraws from participation prior to the completion of the residency period without good cause, he or she will be required to reimburse B for travel and any special expenses that may have been incurred on his or her behalf. "Good cause" for this purpose shall be limited to such extraordinary events as death, disability, or injury of a participant occurring during the program. In those situations where reimbursement is required, B will take all reasonable and appropriate steps to recover such funds.

B will determine the number of awards to be made at the beginning of its fiscal year and will make the awards twice during each fiscal year. Determinations as to the term of each award will be based on the objectives and nature of the program along with the number of artists participating. Determinations will be made on an objective and nondiscriminatory basis.

Description of Selection Process and Persons Making the Selection

The selection process for C is designed to ensure that individuals are selected on an objective and nondiscriminatory basis and to result in the performance of the activities and achievement of the goals and purposes of C. The selection of participants in C will be conducted by a selection committee designated by B. The selection committee will be comprised of artistically diverse critics, academics or artists, and certain individuals from B, who will provide balance and expertise in certain areas of the arts. These may include one or more trustees or employees of B. An individual on the selection committee will not, under any circumstances, be in a position to derive a private benefit, directly or indirectly, if certain potential participants are selected over others. All members of the selection committee will be required to sign a "conflict of interest statement" to ensure objectivity and nondiscrimination in the selection process. The Conflict of Interest Policy will be broad and intended to ensure that no member of the selection committee, or any family member or affiliate of a selection committee member, will derive any benefit whatsoever, either direct or indirect, for the selection of a participant. Members of the selection committee from outside B will be rotated and serve for a period of not more than three years. At the end of the three-year period, they will generally not be eligible to serve again until another three year period has elapsed. In some situations where the number of qualified experts is limited, exceptions may have to be made to this three-year rule.

Currently, the selection committee consists of eleven members. Each member of the selection committee may propose three potential participants. B plans to consider both national and international artists for C and expects the pool of potential participants to be very large. Although the selection committee will generally be relied upon in determining those participants to be considered for participation, the organization will publicize the program on its website, so that other potential participants can be considered for participation in the program. After consideration of a wide variety of potential participants, each member of the selection committee may propose three potential participants and, in determining those three potential participants, it is anticipated that the members of the selection committee will consider a wide variety and significant number of potential participants before making the selection of three potential participants. Once a potential participant is selected, he or she must submit a written application, which would include samples of the individual's works of art, evidence of public recognition, personal and professional references and what the individual intends to accomplish if he or she is selected. Upon receipt of the written applications from potential participants, B will ensure that all applications and other information submitted are considered complete and accurate. On the basis of the written applications, B will then compile and summarize the information about all of the proposed

potential participants and make it available to each member of the selection committee. The selection committee then makes the final decision regarding the selection of those individuals who will participate in the program.

Candidates for Participation

The group from which candidates will be selected for participation in C includes any artist, regardless of gender, creed, race, religion or national origin, who has exhibited both exceptional talent and a profound commitment to his or her chosen form of artistic expression and who is likely to benefit from, and who will cause others to benefit from, their participation in C. Furthermore, the group of potential candidates will be sufficiently large so as to constitute a charitable class and so that the participation of individuals in C will be considered to fulfill an educational purpose as described in IRC Section 170(c)(2)(B). Members of the Selection Committee and members of their families are not eligible to participate. Any board member, officer, and other “disqualified person” within the meaning of IRC Section 4946 with respect to B, employees of B and family members of employees also will not be eligible to participate. An individual also will not be eligible to participate if his or her participation is inconsistent with the purposes described in IRC Section 170(c)(2)(B).

Criteria Used for Selection from Within Group of Potential Grantees

The criteria that will be used by B in selecting participants for C include the identification of gifted artists from varied creative fields, including those in fields of painting, photography and sculpture, new media, music, new genre art, interdisciplinary art, with an opportunity to improve and enhance their artistic capacity, skills and talents. Individuals will be selected based on their individual artistic strength, promise and talent, the relative quality of past works of art, the individual’s proven dedication, evidence of public recognition, personal and professional references and what the individual intends to accomplish if he or she is selected to participate in C.

Notification to Individual Regarding Terms of Participation

The terms and conditions regarding an individual’s participation will be set forth in a letter sent to each individual selected. The individual will be required to state in writing that he or she has read the terms and conditions and agrees to abide by them. The terms and conditions will include a statement that the individual has been selected to spend a specific period of time at a specific location for the purpose of improving and enhancing his or her artistic capacity, skill, and talent. The terms of the grant will specify the amount of the recipient’s travel expenses that will be reimbursed and the details for the provision of housing, food and access to studios. The notification will also set forth, among other things, the reporting requirements imposed as a condition of participation in C, and the consequences of the failure to comply with the reporting requirements or discontinuing participation.

Required Reports from Participants in C

B plans to obtain reports in order to determine whether the participants in C have accomplished the purposes for which it is intended. Within two months of completing the program, participants must submit a detailed written report explaining what they achieved during the program and providing other information requested by B. In addition, each participant in a program of more than six months must submit a brief, written interim progress report after the first six months. In the event a participant in a program of more than six months fails to submit an interim written report after six months, that person will no longer be allowed to continue to participate. An applicant who fails to submit an interim or final report will be required to reimburse B for travel and any special expenses that may have been incurred on his or her behalf.

Retention of Records

B will retain complete and detailed records in connection with C, including:

- Information used to evaluate the qualifications of potential participants.
- Identification of those individuals selected to participate (including any relationship to B) and the details of their participation (including any costs or other expenses incurred by B, whether by reimbursement of the participant or otherwise).
- All required reports received from those participating in the program and any follow-up information obtained when administering the program.

Section 4945(d)(3) of the Code provides that the term "taxable expenditure" means any amount paid or incurred by a private foundation as a grant to an individual for travel, study, or other similar purposes by such individual, unless such grant satisfies the requirements of subsection (g).

Section 4945(g) of the Code provides that section 4945(d)(3) shall not apply to individual grants awarded on an objective and nondiscriminatory basis pursuant to a procedure approved in advance if it is demonstrated that:

- (1) The grant constitutes a scholarship or fellowship grant which is subject to the provisions of section 117(a) and is to be used for study at an educational organization described in section 170(b)(1)(A)(ii);
- (2) The grant constitutes a prize or award which is subject to the provisions of section 74(b), if the recipient of such prize or award is selected from the general public, or
- (3) The purpose of the grant is to achieve a specific objective, produce a report or similar product, or improve or enhance a literary, artistic, musical, scientific, teaching, or other similar capacity, skill, or talent of the grantee.

Section 53.4945-4(c) (1) of the Regulations provides that to secure approval, a private foundation must demonstrate that:

- (i) Its grant procedure includes an objective and nondiscriminatory selection process;
- (ii) Such procedure is reasonably calculated to result in performance by grantees of the activities that the grants are intended to finance; and
- (iii) The foundation plans to obtain reports to determine whether the grantees performed activities that the grants are intended to finance.

Based on the information submitted and assuming your award programs will be conducted as proposed with a view to provide objectivity and nondiscrimination in making the awards, we have determined that your procedures for granting the awards comply with the requirements contained in section 4945(g) of the Code and that awards granted in accordance with such procedures will not constitute "taxable expenditures" within the meaning of section 4945(d) (3).

In addition, we have determined that awards made under your procedures are excludable from the gross income of the recipients subject to the limitations provided by section 117 of the Code.

This determination is conditioned on the understanding that there will be no material change in the facts upon which it is based. It is further conditioned on the premise that no grants will be awarded to foundation managers, or members of the selection committee, or for a purpose that is inconsistent with the purpose described in section 170(c)(2)(B) of the Code.

The approval of your award program procedures herein constitutes a one-time approval of your system standards and procedures designed to result in awards which meet the requirements of section 4945(g)(1) of the Code. This determination only covers the grant programs described above. Thus, approval shall apply to subsequent award programs only as long as the standards and procedures under which they are conducted do not differ materially from those described in your request.

Any funds you distribute to individuals must be made on a true charitable basis in furtherance of the purposes for which you are organized. Therefore, you should maintain adequate records and case histories so that any or all award distributions can be substantiated upon request by the Internal Revenue Service.

This determination is directed only to the organization that requested it. Section 6110(k) (3) of the Code provides that it may not be used or cited as a precedent.

You must report any future changes in your grant making procedures. Please keep a copy of this letter in your permanent records.

We have sent a copy of this letter to your representative as indicated in your power of attorney.

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely yours,

Robert Choi
Director, Exempt Organizations
Rulings and Agreements